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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL BARNES,

Defendant.

CASE NO: 2:13-cr-423-JCM-VCF

**MOTION FOR A JUDGMENT OF
ACQUITTAL FRCP 29(C)**

CERTIFICATION: This Motion is timely filed.

COMES NOW, Defendant, DANIEL BARNES, by and through his attorney of record,
LUCAS J. GAFFNEY, ESQ., of the law firm ORONOS, ERICSSON & GAFFNEY LLC, and
files this Motion for a Judgment of Acquittal FRCP 29(c). This motion is based upon the
following memorandum, all the pleadings and papers currently on file in this case, as well as any
further representations of Counsel as the Court may request of the Parties.

DATED this 19th Day of April, 2016.

/s/ Lucas Gaffney
LUCAS J. GAFFNEY, ESQ.
1050 Indigo Drive, Suite 120
Las Vegas, NV 89145
Attorney for Daniel Barnes

MEMORANDUM OF POINTS AND AUTHORITIES

On February 10, 2016, a federal grand jury in the District of Nevada returned a four-count Second Superseding Indictment [Doc. # 201] charging the Defendant, Daniel Barnes (hereinafter "Barnes") with one count of Conspiracy to Commit Sex Trafficking of a Child (18 U.S.C. 1591(a)(1),(b)(2),(c), and 1594(c)); one count of Transportation of a Minor for Prostitution (18 U.S.C. § 2423(a)); one count of Sex Trafficking of a Child (18 U.S.C. § 1591(a), (b)(2) and (c)); and one count of Conspiracy to Commit Sexual Exploitation of a Child (production of child pornography) (18 U.S.C. § 2251(a) and (e)).

Trial commenced on April 4, 2016, and the jury returned its verdict on April 6, 2016, convicting Mr. Barnes on all four counts. After presentation of the Government's case-in-chief, Mr. Barnes moved for a judgment of acquittal pursuant to Rule 29(a) of the Federal Rules of Criminal Procedure. He now timely moves again for a judgment of acquittal pursuant Rule 29(c) of the Federal Rules of Criminal Procedure.

Rule 29(c) provides that "[a] defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict[.]" Fed. R. Crim. P. 29(c)(1). "If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal." Fed. R. Crim. P. 29(c)(2). On such a motion, courts "must determine whether, viewing the evidence in the light most favorable to the government, the jury could reasonably find the defendant guilty beyond a reasonable doubt." United States v. Merriweather, 777 F.2d 503, 507 (9th Cir. 1985).

Here, the jury made a critical error in convicting Mr. Barnes of counts 1, 2, and 4, because the Government failed to produce sufficient evidence to demonstrate that Mr. Barnes' alleged actions affected interstate commerce. Additionally, the Government failed to present sufficient evidence that Mr. Barnes knew the victim, J.M., was under 18 years of age, acted in

1 reckless disregard that J.M. was under 18 years of age, or had reasonable opportunity to
2 observe J.M. Lastly, as to Count 3, the Government failed to present sufficient evidence that
3 Mr. Barnes transported J.M. from Nevada to California for the purpose of prostitution.

4 Therefore, even when the evidence is viewed in the light most favorable to the
5 government, it is entirely appropriate that this Court set aside Mr. Barnes' verdicts of guilty,
6 and enter an acquittal.
7

8 DATED this 19th Day of April, 2016.

9 /s/ Lucas Gaffney
10 LUCAS J. GAFFNEY, ESQ.
11 1050 Indigo Drive, Suite 120
12 Las Vegas, NV 89145
13 *Attorney for Daniel Barnes*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that I am an employee of Oronoz, Ericsson & Gaffney LLC and that I am a person of such age and discretion so as to be competent to serve papers.

That on April 19, 2016, I served an electronic copy of the above and foregoing Motion for a Judgment of Acquittal FRCP29(c) by electronic service (ECF) to the person(s) named below:

DANIEL G. BOGDEN
United States Attorney
ALLISON HERR
Special Assistant United States Attorney
333 Las Vegas Blvd. South, #5000
Las Vegas, NV 89101
Counsel for United States

/s/ Rachael Stewart
Employee of Oronoz, Ericsson & Gaffney LLC